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**UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA**

ABANTE ROOTER AND
 PLUMBING INC AND LOUIS
 FLOYD individually and on behalf of
 all others similarly situated,
 Plaintiffs,

vs.

ADS MEDIA MARKETING, INC.
 DBA MY SUPERNOVA AND
 JAMES JENKINS and DOES 1
 through 10, inclusive, and each of
 them,

Defendant.

Case No.

CLASS ACTION

**COMPLAINT FOR VIOLATIONS
 OF:**

1. NEGLIGENT VIOLATIONS
 OF THE TELEPHONE
 CONSUMER PROTECTION
 ACT [47 U.S.C. §227(b)]
2. WILLFUL VIOLATIONS
 OF THE TELEPHONE
 CONSUMER PROTECTION
 ACT [47 U.S.C. §227(b)]

DEMAND FOR JURY TRIAL

Plaintiffs ABANTE ROOTER AND PLUMBING INC. AND LOUIS
 FLOYD (“Plaintiffs”), individually and on behalf of all others similarly situated,

1 allege the following upon information and belief based upon personal knowledge:

2 **NATURE OF THE CASE**

3 1. Plaintiffs bring this action individually and on behalf of all others
4 similarly situated seeking damages and any other available legal or equitable
5 remedies resulting from the illegal actions of ADS MEDIA MARKETING, INC.
6 DBA MY SUPERNOVA AND JAMES JENKINS. (“Defendants”), in negligently,
7 knowingly, and/or willfully contacting Plaintiffs on Plaintiffs’ cellular telephone in
8 violation of the Telephone Consumer Protection Act, *47 U.S.C. § 227 et seq.*
9 (“TCPA”) and related regulations.

10
11 **JURISDICTION & VENUE**

12 2. Jurisdiction is proper under *28 U.S.C. § 1332(d)(2)* because Plaintiffs,
13 residents of California, seek relief on behalf of a Class, which will result in at least
14 one class member belonging to a different state than that of Defendants a Delaware
15 company. Plaintiffs also seek up to \$1,500.00 in damages for each call in violation
16 of the TCPA, which, when aggregated among a proposed class in the thousands,
17 exceeds the \$5,000,000.00 threshold for federal court jurisdiction. Therefore, both
18 diversity jurisdiction and the damages threshold under the Class Action Fairness
19 Act of 2005 (“CAFA”) are present, and this Court has jurisdiction.

20 3. Venue is proper in the United States District Court for the Northern
21 District of California pursuant to *28 U.S.C. § 1391(b)(2)* because Plaintiffs reside
22 within the State of California.

23 **PARTIES**

24 4. Plaintiff, LOUIS FLOYD is a natural person residing in the state of
25 California and is a “person” as defined by *47 U.S.C. § 153 (39)*.

26 5. Plaintiff ABANTE ROOTER AND PLUMBING INC. is a natural
27 person residing in Alameda County California and is a “person” as defined by *47*
28 *U.S.C. § 153 (39)*.

1 6. Defendant ADS MEDIA MARKETING, INC. DBA MY
2 SUPERNOVA is a web advertising company and is a “person” as defined by 47
3 *U.S.C. § 153 (39)*.

4 7. Defendant JAMES JENKINS is the owner of ADS MEDIA
5 MARKETING, INC. DBA MY SUPERNOVA a web advertising company and is
6 a “person” as defined by 47 *U.S.C. § 153 (39)*.

7 8. The above-named Defendants and their subsidiaries and agents, are
8 collectively referred to as “Defendants.” The true names and capacities of the
9 Defendants sued herein as DOE DEFENDANTS 1 through 10, inclusive, are
10 currently unknown to Plaintiffs, who therefore sue such Defendants by fictitious
11 names. Each of the Defendants designated herein as a DOE is legally responsible
12 for the unlawful acts alleged herein. Plaintiffs will seek leave of Court to amend
13 the Complaint to reflect the true names and capacities of the DOE Defendants when
14 such identities become known.

15 9. Plaintiffs are informed and believe that at all relevant times, each and
16 every Defendants were acting as an agent and/or employee of each of the other
17 Defendants and was acting within the course and scope of said agency and/or
18 employment with the full knowledge and consent of each of the other Defendants.
19 Plaintiffs are informed and believe that each of the acts and/or omissions
20 complained of herein was made known to, and ratified by, each of the other
21 Defendants.

22 **FACTUAL ALLEGATIONS**

23 10. Beginning in or around July 2015 Defendants contacted Plaintiff
24 Abante Rooter and Plumbing Inc -7511, -5154, -7210 and -1016, in an attempt to
25 solicit Plaintiff to purchase Defendants’ services.

26 11. Beginning in or around March 2019, Defendants contacted Plaintiff
27 LOUIS FLOYD on Plaintiff’s cellular telephone number ending in -7243, in an
28 attempt to solicit Plaintiff to purchase Defendants’ services.

12. Defendants used an “automatic telephone dialing system” as defined by 47 U.S.C. § 227(a)(1) to place its call to Plaintiffs seeking to solicit its services.

13. Defendants contacted or attempted to contact Plaintiffs from multiple telephone numbers.

14. Defendants’ calls constituted calls that were not for emergency purposes as defined by 47 U.S.C. § 227(b)(1)(A).

15. Defendants’ calls were placed to telephone number assigned to a cellular telephone service for which Plaintiffs incur a charge for incoming calls pursuant to 47 U.S.C. § 227(b)(1).

16. During all relevant times, Defendants did not possess Plaintiffs’ “prior express consent” to receive calls using an automatic telephone dialing system or an artificial or prerecorded voice on their cellular telephones pursuant to 47 U.S.C. § 227(b)(1)(A).

17. Such calls constitute solicitation calls pursuant to 47 C.F.R. § 64.1200(c)(2) as they were attempts to promote or sell Defendants’ services.

CLASS ALLEGATIONS

18. Plaintiffs bring this action individually and on behalf of all others similarly situated, as a member the ATDS Class.

19. The class concerning the ATDS claim for no prior express consent (hereafter “The ATDS Class”) is defined as follows:

All persons within the United States who received any solicitation/telemarketing telephone calls from Defendants to said person’s cellular telephone made through the use of any automatic telephone dialing system or an artificial or prerecorded voice and such person had not previously consented to receiving such calls within the four years prior to the filing of this Complaint

1 20. Plaintiffs represent, and are a member of, The ATDS Class, consisting
2 of all persons within the United States who received any collection telephone calls
3 from Defendants to said person's cellular telephone made through the use of any
4 automatic telephone dialing system or an artificial or prerecorded voice and such
5 person had not previously not provided their cellular telephone number to
6 Defendants within the four years prior to the filing of this Complaint.

7 21. Defendants its employees and agents are excluded from The Class.
8 Plaintiffs do not know the number of members in The Class, but believes the Class
9 members number in the thousands, if not more. Thus, this matter should be
10 certified as a Class Action to assist in the expeditious litigation of the matter.

11 22. The Class is so numerous that the individual joinder of all of its
12 members is impractical. While the exact number and identities of The Class
13 members are unknown to Plaintiffs at this time and can only be ascertained through
14 appropriate discovery, Plaintiffs are informed and believe and thereon allege that
15 The Class includes thousands of members. Plaintiffs allege that The Class members
16 may be ascertained by the records maintained by Defendant.

17 23. Plaintiffs and members of The ATDS Class were harmed by the acts
18 of Defendants in at least the following ways: Defendants illegally contacted
19 Plaintiffs and ATDS Class members via their cellular telephones thereby causing
20 Plaintiffs and ATDS Class members to incur certain charges or reduced telephone
21 time for which Plaintiffs and ATDS Class members had previously paid by having
22 to retrieve or administer messages left by Defendants during those illegal calls, and
23 invading the privacy of said Plaintiffs and ATDS Class members.

24 24. Common questions of fact and law exist as to all members of The
25 ATDS Class which predominate over any questions affecting only individual
26 members of The ATDS Class. These common legal and factual questions, which
27 do not vary between ATDS Class members, and which may be determined without
28 reference to the individual circumstances of any ATDS Class members, include,

1 but are not limited to, the following:

- 2 a. Whether, within the four years prior to the filing of this
3 Complaint, Defendants made any telemarketing/solicitation
4 call (other than a call made for emergency purposes or made
5 with the prior express consent of the called party) to a ATDS
6 Class member using any automatic telephone dialing system or
7 any artificial or prerecorded voice to any telephone number
8 assigned to a cellular telephone service;
- 9 b. Whether Plaintiffs and the ATDS Class members were
10 damaged thereby, and the extent of damages for such violation;
11 and
- 12 c. Whether Defendants should be enjoined from engaging in such
13 conduct in the future.

14 25. As a person that received numerous telemarketing/solicitation calls
15 from Defendants using an automatic telephone dialing system or an artificial or
16 prerecorded voice, without Plaintiffs' prior express consent, Plaintiffs are asserting
17 claims that are typical of The ATDS Class.

18 26. Plaintiffs will fairly and adequately protect the interests of the
19 members of The Class. Plaintiffs have retained attorneys experienced in the
20 prosecution of class actions.

21 27. A class action is superior to other available methods of fair and
22 efficient adjudication of this controversy, since individual litigation of the claims
23 of all Class members is impracticable. Even if every Class members could afford
24 individual litigation, the court system could not. It would be unduly burdensome
25 to the courts in which individual litigation of numerous issues would proceed.
26 Individualized litigation would also present the potential for varying, inconsistent,
27 or contradictory judgments and would magnify the delay and expense to all parties
28 and to the court system resulting from multiple trials of the same complex factual

1 issues. By contrast, the conduct of this action as a class action presents fewer
 2 management difficulties, conserves the resources of the parties and of the court
 3 system, and protects the rights of each Class member.

4 28. The prosecution of separate actions by individual Class members
 5 would create a risk of adjudications with respect to them that would, as a practical
 6 matter, be dispositive of the interests of the other Class members not parties to such
 7 adjudications or that would substantially impair or impede the ability of such non-
 8 party Class members to protect their interests.

9 29. Defendants have acted or refused to act in respect generally applicable
 10 to The Class, thereby making appropriate final and injunctive relief with regard to
 11 the members of the Class as a whole.

12 **FIRST CAUSE OF ACTION**

13 **Negligent Violations of the Telephone Consumer Protection Act**

14 **47 U.S.C. §227(b).**

15 **On Behalf of the ATDS Class**

16 30. Plaintiffs repeat and incorporate by reference into this cause of action
 17 the allegations set forth above at Paragraphs 1-29.

18 31. The foregoing acts and omissions of Defendants constitute numerous
 19 and multiple negligent violations of the TCPA, including but not limited to each
 20 and every one of the above cited provisions of *47 U.S.C. § 227(b)*, and in particular
 21 *47 U.S.C. § 227 (b)(1)(A)*.

22 32. As a result of Defendants' negligent violations of *47 U.S.C. § 227(b)*,
 23 Plaintiffs and the Class Members are entitled an award of \$500.00 in statutory
 24 damages, for each and every violation, pursuant to *47 U.S.C. § 227(b)(3)(B)*.

25 33. Plaintiffs and the ATDS Class members are also entitled to and seek
 26 injunctive relief prohibiting such conduct in the future.

27 **SECOND CAUSE OF ACTION**

Knowing and/or Willful Violations of the Telephone Consumer Protection Act

47 U.S.C. §227(b)

On Behalf of the ATDS Class

34. Plaintiffs repeat and incorporate by reference into this cause of action the allegations set forth above at Paragraphs 1-28.

35. The foregoing acts and omissions of Defendants constitute numerous and multiple knowing and/or willful violations of the TCPA, including but not limited to each and every one of the above cited provisions of *47 U.S.C. § 227(b)*, and in particular *47 U.S.C. § 227 (b)(1)(A)*.

36. As a result of Defendants' knowing and/or willful violations of *47 U.S.C. § 227(b)*, Plaintiffs and the ATDS Class members are entitled an award of \$1,500.00 in statutory damages, for each and every violation, pursuant to *47 U.S.C. § 227(b)(3)(B)* and *47 U.S.C. § 227(b)(3)(C)*.

37. Plaintiffs and the Class members are also entitled to and seek injunctive relief prohibiting such conduct in the future.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs request judgment against Defendants for the following:

FIRST CAUSE OF ACTION

Negligent Violations of the Telephone Consumer Protection Act

47 U.S.C. §227(b)

- As a result of Defendants' negligent violations of *47 U.S.C. §227(b)(1)*, Plaintiffs and the ATDS Class members are entitled to and request \$500 in statutory damages, for each and every violation, pursuant to *47 U.S.C. 227(b)(3)(B)*.
- Any and all other relief that the Court deems just and proper.

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SECOND CAUSE OF ACTION

Knowing and/or Willful Violations of the Telephone Consumer Protection Act

47 U.S.C. §227(b)

- As a result of Defendants' willful and/or knowing violations of 47 U.S.C. §227(b)(1), Plaintiffs and the ATDS Class members are entitled to and request treble damages, as provided by statute, up to \$1,500, for each and every violation, pursuant to 47 U.S.C. §227(b)(3)(B) and 47 U.S.C. §227(b)(3)(C).
- Any and all other relief that the Court deems just and proper.

JURY DEMAND

38. Pursuant to the Seventh Amendment to the Constitution of the United States of America, Plaintiffs are entitled to, and demand, a trial by jury.

Respectfully Submitted this 14th Day of February, 2020.

LAW OFFICES OF TODD M. FRIEDMAN, P.C.

By: /s/ Todd M. Friedman
Todd M. Friedman
Law Offices of Todd M. Friedman
Attorney for Plaintiffs